

MEMO

DATE: March 6, 2008

TO: Community, Economic & Human Development Committee

FROM: Jeffrey S. Dunn, Government Affairs Analyst, Ext. 840, dunn@scag.ca.gov

SUBJECT: SB 375 (Steinberg) – Summary of Legislative Developments

BACKGROUND:

SB 375 (Steinberg) would require that regional transportation plans for certain regions include a *sustainable communities strategy* (SCS) designed to achieve a reduction of greenhouse gas emissions from automobiles and light trucks. SB 375 seeks to reward local governments whose land use decisions and development are consistent with the SCS. Because the bill has been amended numerous times and has been the subject of extensive, ongoing discussion by and between statewide stakeholders including the League of California Cities and CSAC, environmental organizations, Councils of Governments, MPOs, transportation commissions, the building industry and others, staff will provide an update of the status of these negotiations, as well as any pertinent information on the bill's movement in the legislative process.

A copy of the most recent version of the bill containing provisions offered by local government as of 02/11/08 is attached. Any updates occurring after that date will be discussed by staff as soon as it becomes available. SCAG has invited Senator Steinberg to attend the March 6 meeting to specifically address SB 375.


FISCAL IMPACT:

Funding for preparation of this item is contained within existing budgetary resources in 08-090, 08-810 and 08-800.


Reviewed by:


Division Manager

Reviewed by:


Department Director

Reviewed by:


Chief Financial Officer

February 11, 2008 - LOCAL GOVERNMENT AMENDMENTS

BILL NUMBER: SB 375 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JANUARY 28, 2008
AMENDED IN ASSEMBLY SEPTEMBER 12, 2007
AMENDED IN ASSEMBLY JULY 17, 2007
AMENDED IN ASSEMBLY JUNE 27, 2007
AMENDED IN SENATE JUNE 4, 2007
AMENDED IN SENATE MAY 2, 2007
AMENDED IN SENATE APRIL 17, 2007

INTRODUCED BY Senator Steinberg

FEBRUARY 21, 2007

An act to amend Sections 14527, 65080, and 65584.01 of, and to add Sections 14522.1, 14522.2, and 65080.01 to, the Government Code, and to amend Sections 21061.3 and 21094 of, and to add Chapter 4.2 (commencing with Section 21155) to Division 13 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 375, as amended, Steinberg. Transportation planning: travel demand models: sustainable communities strategy: environmental review.

(1) Existing law requires certain transportation planning activities by the Department of Transportation and by designated regional transportation planning agencies, including development of a regional transportation plan. Existing law authorizes the California Transportation Commission, in cooperation with the regional agencies, to prescribe study areas for analysis and evaluation.

This bill would require the commission, by July 1, ~~2008~~ 2009, to adopt guidelines for travel demand models used in the development of regional transportation plans by certain transportation planning entities. The bill would require the Department of Transportation to assist the commission, on request, in this regard, and would impose other related requirements.

This bill would also require the regional transportation plan for specified regions to include a sustainable communities strategy, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region. The bill would require the State Air Resources Board, working in consultation with the affected transportation agencies, to provide each affected region with greenhouse gas emission reduction targets from the automobile and light truck sector for 2020 and 2035 by January 1, ~~2009~~ 2010, and to update the regional targets, as specified, until 2050. The bill would require certain transportation planning and programming activities by affected regional agencies to be consistent with the sustainable communities strategy contained in the regional transportation plan, but would state that certain transportation projects programmed for

funding on or before December 31, 2011, are not required to be consistent with the sustainable communities strategy. To the extent the sustainable communities strategy is unable to achieve the greenhouse gas emissions reduction targets, the bill would require affected regional agencies to prepare a supplement to the sustainable communities strategy that would achieve the targets through alternative development patterns or additional transportation measures. The bill would also require an affected regional agency to submit a ~~report~~ statement to the California Transportation Commission ~~on~~ describing the relationship of each project in the regional transportation improvement program to the regional transportation plan and supplement adopted by the regional agency. The bill would enact other related provisions.

Because the bill would impose additional duties on local agencies, it would impose a state-mandated local program.

(2) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would require the environmental document prepared pursuant to CEQA to only examine the significant or potentially significant project specific impacts of a project located in a local jurisdiction that has amended its general plan so that the land use, housing, and open-space elements of the general plan are consistent with the sustainable communities strategy most recently adopted by the transportation planning agency, pursuant to the requirements specified in the bill, if the project meets certain requirements.

The bill would provide that no additional review is required pursuant to CEQA for a project if the legislative body of a local jurisdiction that has amended its general plan, as provided above, finds, after conducting a public hearing, that the project meets certain criteria and is declared to be a sustainable communities project.

The bill would also authorize the legislative body of a local jurisdiction to adopt traffic mitigation measures for future residential projects that meet specified criteria. The bill would exempt such a residential project seeking a land use approval from compliance with additional measures for traffic impacts, if the local jurisdiction has adopted those traffic mitigation measures.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California; automobiles and light trucks alone contribute almost 30 percent. The transportation sector is the single largest contributor of greenhouse gases of any sector.

(b) In 2006, the Legislature passed and the Governor signed Assembly Bill 32 (Chapter 488 of the Statutes of 2006; hereafter AB 32), which requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020. In 1990, greenhouse gas emissions from automobiles and light trucks were approximately 73 million metric tons, but by 2006 these emissions had increased to approximately 100 million metric tons.

(c) Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without significant changes in land use and transportation policy, California will not be able to achieve the goals of AB 32.

(d) In addition, automobiles and light trucks account for 50 percent of air pollution in California and 70 percent of its consumption of petroleum. Changes in land use and transportation policy based upon proven modeling methodology, will provide significant assistance to California's goals to implement the federal and state Clean Air Acts and to reduce its dependence on petroleum.

(e) Current federal law requires regional transportation planning agencies to include a land use allocation in the regional transportation plan. Some regions have engaged in a regional "blueprint" process to prepare the land use allocation. This process has been open and transparent. The Legislature intends, by this act, to build upon that successful process and to take an evolutionary step forward by requiring regional transportation planning agencies to develop and incorporate a sustainable communities strategy into the regional transportation plan. Nothing in this law should be interpreted as interfering with the requirements of federal law or the authority of cities and counties to make local land use decisions.

(f) To the extent that the state seeks to encourage infill development as a strategy to reduce greenhouse gas emissions, the state should also identify sustainable funding sources for the investments in infrastructure, alternative transportation, and planning necessary to support infill development.

(f g) The California Environmental Quality Act (CEQA) is California's premier environmental statute. New provisions of CEQA should be enacted so that the statute encourages developers to submit applications and local governments to make land use decisions that will help the state achieve its climate goals under AB 32, assist in the achievement of state and federal air quality standards, and increase petroleum conservation.

—(e)—

(g h) Current planning models and analytical techniques used for making transportation infrastructure decisions and for air quality planning should be able to assess the effects of policy choices, such as residential development patterns, expanded transit service and accessibility, the walkability of communities, and the use of economic incentives and disincentives. However, the accuracy of these models are only good as the underlying assumptions. The state should continue to commit resources to develop more accurate modeling and statistical data to support the achievement of the emission reduction goals in AB 32.

(i) The California Transportation Commission has developed guidelines for travel demand models used in the development of regional transportation plans. This legislation assures their continued oversight of the guidelines as they may update them as needed from time to time.

SEC. 2. Section 14522.1 is added to the Government Code, to read:

14522.1. (a) (1) The commission, in consultation with the State Air Resources Board, shall ~~adopt~~ maintain guidelines for travel demand models used in the development of regional transportation plans by (A) federally designated metropolitan planning organizations, (B) county transportation agencies or commissions in areas that have been designated as nonattainment areas under the federal Clean Air Act, except those counties that are designated as nonattainment strictly due to transport from upwind districts and (C) in the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura, the agency described in Section 130004 of the Public Utilities Code.

(2) Any revision of the preparation of the guidelines shall include the formation of an advisory committee that shall include representatives of the regional transportation planning agencies, the department, organizations knowledgeable in the creation and use of travel demand models, local governments, and organizations concerned with the impacts of transportation investments on communities and the environment. Before amending the guidelines, the commission shall hold two workshops on the guidelines, one in northern California and one in southern California. The workshops shall be incorporated into regular commission meetings.

(b) The department shall assist the commission in the preparation of the guidelines, if requested to do so by the commission.

(c) The guidelines shall, at a minimum and to the extent practicable, taking into account such factors as the size and available resources of the regional transportation planning agency and whether the area affected by the plan is located in a non-attainment area under the Clean Air Act, describe how regional transportation planning agencies may account for all of the following:

(1) The relationship between land use density and household vehicle ownership and vehicle miles traveled in a way that is consistent with statistical research.

(2) The impact of enhanced transit service levels on household vehicle ownership and vehicle miles traveled.

(3) Changes in induced travel and induced land development patterns likely to result from new transportation infrastructure, including expansion of highways and passenger rail ~~resulting from highway or passenger rail expansion.~~

(4) Mode splitting that allocates trips between automobile, transit, carpool, and bicycle and pedestrian trips. If a travel demand model is unable to forecast bicycle and pedestrian trips, another means may be used to estimate those trips.

(d) The guidelines shall be adopted on or before July 1, ~~2008~~ 2009.

SEC. 3. Section 14522.2 is added to the Government Code, to read:

14522.2. ~~(a)~~ A regional transportation planning agency shall disseminate the methodology, results, and key assumptions of whichever travel demand model it uses in a way that would be useable and understandable to the public.

~~(b) Transportation planning agencies other than those identified in paragraph (1) of subdivision (a) of Section 14522.1, cities, counties, and congestion management agencies within multicounty regions are encouraged, but not required, to utilize the guidelines.~~

SEC. 4. Section 14527 of the Government Code is amended to read:

14527. (a) After consulting with the department, the regional transportation planning agencies and county transportation commissions shall adopt and submit to the commission and the department, not later than December 15, 2001, and December 15 of each odd-numbered year thereafter, a five-year regional transportation improvement program in conformance with Section 65082. In counties where a county transportation commission has been created pursuant to Chapter 2 (commencing with Section 130050) of Division 12 of the Public Utilities Code, that commission shall adopt and submit the county transportation improvement program, in conformance with Sections 130303 and 130304 of that code, to the multicounty-designated transportation planning agency. For each project ~~included in~~ added to the program after January 1, 2009, a ~~report~~ statement shall be submitted ~~for information purposes to the commission on~~ describing the relationship of the project to

the regional transportation plan and supplement, if any, prepared pursuant to Section 65080. Other information, including a program for expenditure of local or federal funds, may be submitted for information purposes with the program, but only at the discretion of the transportation planning agencies or the county transportation commissions. As used in this section, "county transportation commission" includes a transportation authority created pursuant to Chapter 2 (commencing with Section 130050) of Division 12 of the Public Utilities Code.

(b) The regional transportation improvement program shall include all projects to be funded with the county share under paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code. The regional programs shall be limited to projects to be funded in whole or in part with the county share that shall include all projects to receive allocations by the commission during the following five fiscal years. For each project, the total expenditure for each project component and the total amount of commission allocation and the year of allocation shall be stated. The total cost

Comment [R1]: This language was added by LSC to parallel the structure and purpose of the following sentence.

of projects to be funded with the county share shall not exceed the amount specified in the fund estimate made by the commission pursuant to Section 14525.

(c) The regional transportation planning agencies and county transportation commissions may recommend projects to improve state highways with the interregional share pursuant to subdivision (b) of Section 164 of the Streets and Highways Code. The recommendations shall be separate and distinct from the regional transportation improvement program. A project recommended for funding pursuant to this subdivision shall constitute a usable segment and shall not be a condition for inclusion of other projects in the regional transportation improvement program.

(d) The department may nominate or recommend the inclusion of projects in the regional transportation improvement program to improve state highways with the county share pursuant to paragraph (2) of subdivision (a) and subdivision (e) of Section 164 of the Streets and Highways Code. A regional transportation planning agency and a county transportation commission shall have sole authority for determining whether any of the project nominations or recommendations are accepted and included in the regional transportation improvement program adopted and submitted pursuant to this section. This authority provided to a regional transportation planning agency or to a county transportation commission extends only to a project located within its jurisdiction.

(e) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and shall be consistent with, and provide the information required in, subdivision (b) of Section 14529.

(f) The regional transportation improvement program may not change the project delivery milestone date of any project as shown in the prior adopted state transportation improvement program without the consent of the department or other agency responsible for the project's delivery.

(g) Projects may not be included in the regional transportation improvement program without a complete project study report or, for a project that is not on a state highway, a project study report equivalent or major investment study.

(h) Each transportation planning agency and county transportation commission may request and receive an amount not to exceed 5 percent of its county share for the purposes of project planning, programming, and monitoring.

SEC. 5. Section 65080 of the Government Code is amended to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

(i) Single occupant vehicle.

(ii) Multiple occupant vehicle or carpool.

(iii) Public transit including commuter rail and intercity rail.

(iv) Walking.

(v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.

(F) The requirements elements of this section may be not provided utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(2) ~~(A)~~ - A sustainable communities strategy prepared as follows:

~~(A) Within the region under the jurisdiction of each of the agencies described in paragraph (1) of subdivision (a) of Section 14522.1, No later than January 1, 2009, 2010, the State Air Resources Board, working in consultation with the affected transportation planning agencies and after at least one public workshop in each region under the jurisdiction of the each of the agencies described in paragraph (1) of subdivision (a) of Section 14522.1, shall provide each affected region with greenhouse gas emission reduction targets from the automobile and light truck sector for 2020 and 2035, respectively.~~
(i) The emission reduction targets shall be calculated on the basis of "greenhouse gas emission sources" as that term is defined in subdivision (i) of section 38505 of the Health and Safety Code and consistent with the regulations promulgated pursuant to the California Global Warming Solutions Act of 2006 (beginning with section 38500 of the Health and Safety Code).

(ii) The state board shall update the regional targets consistent with each agency's timeframe for updating its regional transportation

Comment [h2]: More Section 35080(b)(2)(A) to Health & Safety Code. This is not part of the SCN. It creates a duty on CARB to set regional targets. This is not within statutory structure and requires understanding the requirements and different following objectives which need to be returned.

plan under federal law until 2050.

(iii) In ~~making~~ establishing these ~~determinations~~ targets, the state board shall first consider greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel consumption, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions, and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from other sources.

(B) Each agency described in paragraph (1) of subdivision (a) of Section 14522.1 shall prepare a sustainable communities strategy, consistent with the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, that (i) identifies areas within the region sufficient to house ~~all the population of the region including~~ all economic segments of the population of the region over the course of the planning period taking into account

net migration into the region, population growth, household formation and employment growth; (ii) identifies a transportation network to service the transportation needs of the region; (iii) using the ~~best practically available scientific information~~, identifies significant resource areas and significant farmland; (iv) sets forth a development pattern for the region, a transportation network, and other transportation measures that will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the targets developed by the board; and (v) will allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).

Comment [h3]: SANDAG covers about "best practically available scientific information needs to be addressed."

(C) In ~~a~~ the multicounty transportation planning agency ~~described in Section 130004 of the Public Utilities Code~~, a county and the cities within that county may propose the sustainable communities strategy for that county. That sustainable communities strategy may be approved as part of the sustainable communities strategy for the region provided that the strategy for the region complies with the requirements of this section.

(D) A sustainable communities strategy shall be consistent with the state planning priorities specified pursuant to Section 65041.1.

(E) In preparing a sustainable communities strategy, the transportation planning agency shall consider the most recent municipal service reviews completed by the local agency formation commissions within the planning area and the adopted spheres of influence that have been adopted within its region.

Comment [h4]: Currently, this limits the option of a developing county specific SCS in a multi-county region to counties in the SCAG region. To LAC's knowledge, the only RPTA that observes county-specific language is MTC in the Bay Area. Thus, this language should be changed to limit the use of the strategy with SCS in the ABAG region, rather than only authorizing it in the SCAG region. AMBAG and the emerging Central Valley RPTAs may also wish to refer themselves to this process.

(F) Each agency described in paragraph (1) of subdivision (a) of Section 14522.1 and, within the jurisdiction of the Metropolitan Transportation Commission, the Association of Bay Area Governments shall identify the lands for growth in housing and employment in the sustainable communities strategy in accordance with the following priorities:

(i) Infill and redevelopment in existing urbanized areas; areas identified for growth in housing and employment in an adopted habitat conservation plan or natural communities conservation plan, and any lands within spheres of influence as of July 1, ~~2008~~ 2008.

Comment [h5]: 2008 is the date LAFCOs have to have updated regional and municipal service reviews. However, this requires some study to identify a map of the spheres of influence (often a complex undertaking). LAFCOs should be required to obtain and keep up to date the LAFCO sphere maps on file. LAFCOs keep updated maps and not maintain a map on specific effective date for any length of time.

those identified in clause (i) that are adjacent to an existing or reasonably foreseeable planned development area ~~or an within a~~ sphere of influence, and do not include a significant resource area or significant farmlands.

~~projected growth in jobs and housing on lands in~~ areas in clauses (i) and

(iv) If it is not feasible to identify ~~lands~~ areas for all of the projected growth in jobs and housing to house all of the population of the region identified pursuant to subparagraph (B) of paragraph (2) of subdivision (b) ~~on lands~~ in areas in clauses (i), (ii),

(v) If it is not feasible to identify ~~lands~~ areas to house all of the population of the region identified pursuant to subparagraph (B) of paragraph (2) of subdivision (b) ~~for all of the~~

(iii), and (iv), then it may identify future development ~~on~~ in other areas, to the extent consistent with other provisions of local, state, or federal law, but not on significant resource areas defined in paragraph (1) or (2) of subdivision (a) of Section 65080.01.

feasible measures to mitigate the impact of projected development on
in those areas on global warming as that phrase is used in the
California Global Warming Solutions Act of 2006. lands.

(G) Prior to adopting a sustainable communities strategy, the regional transportation planning agency and, within the jurisdiction of the Metropolitan Transportation Commission, the Association of Bay Area Governments shall (i) quantify the reduction in greenhouse gas emissions forecasted to be achieved by the sustainable communities strategy and set forth the difference, if any, between the amount of that reduction and the target for the region established pursuant to subparagraph (A) of paragraph (2) of subdivision (b); (ii) find that the sustainable communities strategy is based upon the most recent planning assumptions in force at the time development of the strategy began in accordance with 40 CFR 93.110; (iii) find that the sustainable communities strategy is consistent with current and forecasted transportation and land use conditions and trends in accordance with 23 CFR 450.322; and (v) find that the sustainable

Comment [h5] Despite the changes to make (B) consistent with (A), the inclusion of an area within a sphere of influence that includes significant resource areas still implies that an area within a sphere of influence that does not include a significant resource area must be made available for development.

communities strategy will or will not achieve the target for the region established pursuant to subparagraph (A) of paragraph (2) of subdivision (b). either (i) find that
~~nothing has been enacted within the region for a five year supply of the housing need identified in the sustainable communities strategy, or (ii) state with specificity why the development pattern set forth in the sustainable communities strategy is the development pattern that is most likely to occur.~~

Process Placeholder

Comment [h7]: Leave a space for a placeholder for participation of individual cities and counties.

(H) If the sustainable communities strategy, prepared in compliance with subparagraph (B), is unable to reduce greenhouse gas emissions to achieve the targets established by the board, the regional transportation planning agency shall prepare a supplement to the sustainable communities strategy. The supplement may include that would achieve
~~those greenhouse gas emission targets through new or additional transportation measures, infrastructure improvements, additional funding sources, alternative development patterns or additional strategies that, if adopted and implemented, would achieve those greenhouse gas emissions targets. Transportation measures may be added without reference to a constraint on revenue requirement but shall include suggested sources of revenue to fund the additional measures.~~
The supplement shall be a separate document and shall not be part of the regional transportation plan but may be adopted concurrently with the sustainable communities strategy. The supplement shall comply with all of the following:

(i) The agency shall develop the supplement using the documented participation plan adopted by the agency for the development of the regional transportation plan as required by Section 450 of Title 23 of the Code of Federal Regulations.

(ii) If the supplement includes an alternative development pattern for the region, it shall identify areas within the region sufficient to house all the population of the region including all economic segments of the population over the course of the planning period taking into account net migration into the region, population growth, household formation and employment growth; describe the differences between the alternative development pattern and the development pattern included in the sustainable communities strategy; and describe how the alternative development pattern will achieve the targets for the region established pursuant to subparagraph (A) of paragraph (2) of subdivision (b).

(iii) The supplement shall state how the targets for region established pursuant to subparagraph (A) of paragraph (2) of subdivision (b) will be achieved through implementation of the supplement.

(I) A sustainable communities strategy and a supplement does not regulate the use of land, nor shall ~~it~~ they be subject to any ~~state review or~~ approval. Nothing in a sustainable communities strategy or supplement shall be interpreted as superseding or interfering with the exercise of the land use authority of cities and counties within the region. Nothing in this section requires an agency to approve a sustainable communities strategy that would be inconsistent with Part 450 of

Title 23 of, or Part 93 of Title 40 of, the Code of Federal Regulations and any administrative guidance under those regulations. Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law.

~~(J) Projects programmed for funding on or before December 31, 2011, are not required to be consistent with the sustainable communities strategy if they (i) are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, (ii) are funded pursuant to Chapter 12.49 (commencing with Section 0079.20) of Division 1 of Title 2, or (iii) were specifically listed in a ballot measure prior to December 31, 2006, approving a sales tax increase for transportation projects.~~

(3) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all transportation projects proposed for development during the 20-year or greater life of the plan. ~~The action element shall be consistent with the sustainable communities strategy, except as provided in subparagraph (J) of paragraph (3).~~

The action element shall consider congestion management programming activities carried out within the region.

(4) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

- (i) State highway expansion.
- (ii) State highway rehabilitation, maintenance, and operations.
- (iii) Local road and street expansion.
- (iv) Local road and street rehabilitation, maintenance, and operation.
- (v) Mass transit, commuter rail, and intercity rail expansion.
- (vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.
- (vii) Pedestrian and bicycle facilities.
- (viii) Environmental enhancements and mitigation.
- (ix) Research and planning.
- (x) Other categories.

(c) Each transportation planning agency may also include other factors of local significance as an element of the regional transportation plan, including, but not limited to, issues of mobility for specific sectors of the community, including, but not limited to, senior citizens.

(d) Except as otherwise provided in this subdivision, each

transportation planning agency shall adopt and submit, every four years, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. A transportation planning agency located in a federally designated air quality attainment area or that does not contain an urbanized area may at its option adopt and submit a regional transportation plan every five years. When applicable, the plan shall be consistent with federal planning and programming requirements and shall conform to the regional transportation plan guidelines adopted by the California Transportation Commission. Prior to adoption of the regional transportation plan, a public hearing shall be held after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 6. Section 65080.01 is added to the Government Code, to read:

65080.01. The following definitions apply to terms used in Section 65080:

(a) "Significant resource areas" include (1) all publicly owned parks and open space; (2) open space or habitat areas protected by natural community conservation plans, habitat conservation plans, and other adopted natural resource protection plans; (3) habitat for species identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies or protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; (4) lands subject to conservation or agricultural easements for conservation or agricultural purposes by local governments, special districts, or nonprofit 501(c)(3) organizations in partnership with a local government or special district, and lands under Williamson Act contracts; (5) areas designated for open-space uses in adopted open-space elements of the local general plan or by local ordinance; (6) ~~habitat blocks, linkages, or watershed units that protect regional populations of native species including sensitive, endemic, keystone, and umbrella species~~ Areas that protect regional populations of native species, including endangered and threatened species as defined in section 2070 of the Fish and Game Code; and covered species and candidate species as those terms are defined in section 2805 of the Fish and Game Code ~~sensitive, endemic, keystone, and umbrella species~~, and the ecological processes that maintain them; and (7) an area shown on the Federal Insurance Rate Map as a floodway; ~~subject to flooding where a development project would not, at the time of development in the judgment of the agency, meet the requirements of the National Flood Insurance Program or an~~ where the area is that is subject to more restrictive protective provisions of state law or local ordinance.

(b) "Significant farmland" means farmland that is classified as prime or unique farmland; or farmland identified by a local agency in its general plan that meets or exceeds the standards for prime, unique, or farmland of statewide importance; or farmland of statewide importance, and is outside all existing city spheres of influence or city limits as of January 1, ~~2008~~ July 1, 2008.

~~(c) "Consistent with the sustainable communities strategy" means that the capacity of the transportation projects or improvements does not exceed that which is necessary to provide reasonable service~~

Comment [h8]: DCC change consistent with change in Section 65080.01

~~levels for the existing population and the planned growth of the region as set forth in the sustainable communities strategy.~~

(d) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(e) "Urbanized area" means an incorporated city or an urbanized area or urban cluster as defined by the United States Census Bureau. For unincorporated areas outside of an urban area or urban cluster, the area must be within a designated urban service area that is designated in the local general plan for urban development and that is served by public sewer and water.

SEC. 6.5 Placeholder:

Infill and Planning Incentives for local agencies that adopt plans and update zoning to encourage infill development. Similar concept for county resource reserve areas.

SEC. 7. Section 65584.01 of the Government Code is amended to read:

65584.01. (a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, where applicable, shall determine the existing and projected need for housing for each region in the following manner:

(b) The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.

(c) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available,

the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (E), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d) (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). ~~The region's existing and projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan.~~ Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

Section 8. Section 65584.04 of the Government Code is amended to read:

(a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable, pursuant to this section for each jurisdiction's next planning period. The methodology shall be consistent with the objectives listed in subdivision (d) of Section 65584 and with the requirements of paragraph (2) of subdivision (b) of section 65080.

(b) (1) No more than six months prior to the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (d) that will allow the development of a methodology based upon the factors established in subdivision (d).

(2) The council of governments shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(3) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(4) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (d) prior to the public comment period provided for in subdivision (c).

(c) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community. The proposed methodology, along with any relevant underlying data and assumptions, and an explanation of how information about local government conditions gathered pursuant to subdivision (b) has been used to develop the proposed methodology, and how each of the factors listed in subdivision (d) is incorporated into the methodology, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(d) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High-housing cost burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.

(e) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of Section 65584. The methodology may include numerical weighting.

(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

SEC. 9. Section 65588 of the Government Code is amended to read:

(a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every eight years for a jurisdiction within an agency described in paragraph (1) of subdivision (a) of Section 14522.1 to reflect the adoption of the regional transportation plan for the area in which the local government is located; and not less than every ten years for all other jurisdictions; to reflect the results of this periodic review and the adoption of the regional transportation plan for the area in which the local government is located.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding subdivision (b) or the date of adoption of the housing elements previously in existence, each city, county, and city and county shall revise its housing element according to the following schedule:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2006, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2007, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2002, for the third revision, and June 30, 2008, for the fourth revision.

(4) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2002, for the third revision, and June 30, 2009, for the fourth revision.

(5) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 2005, for the fourth revision.

(6) All other local governments: December 31, 2003, for the third revision, and June 30, 2009, for the fourth revision.

(7) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

The provisions of subdivision (b) shall take effect beginning with the first review cycle after completion of the revisions required by subdivision (e).

SEC. 11. Section 21061.3 of the Public Resources Code is amended to read:

21061.3. "Infill site" means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply:

(1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.

(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses.

SEC. 9. Section 21094 of the Public Resources Code is amended to read:

21094. (a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to the following:

(1) a later project which the lead agency determines (i) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (ii) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (iii) is not subject to Section 21166; and

(2) a project described in subdivision (f).

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the

requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

(f) ~~If a residential, commercial, or retail project may tier the environmental analysis of the climate change impacts of greenhouse gas emissions from automobiles and light trucks associated with the project from the environmental impact report prepared for the regional transportation plan if the project is consistent with (1) the development pattern; and (2) building intensity and population density standards, in any are included; in a sustainable communities strategy, as modified by a supplement, if any, adopted pursuant to Section 65080 of the Government Code. 7 the environmental analysis of that project may tier the analysis of the climate impacts of greenhouse gas emissions from automobiles and light trucks associated with the project from the environmental impact report prepared for the regional transportation plan. For purposes of this section, "consistent with a sustainable communities strategy" means that the use, density, and intensity of the project are consistent with the use, density, and intensity identified for the project area in the sustainable communities strategy, as modified by a supplement, if any, and any mitigation measures adopted in the environmental impact report on the regional transportation plan have been or will be incorporated into the project. Nothing in this subdivision restricts the use of a tiered environmental impact report as otherwise provided in this division.~~

SEC. 10. Chapter 4.2 (commencing with Section 21155) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.2. IMPLEMENTATION OF THE SUSTAINABLE COMMUNITIES STRATEGY

21155. (a) This chapter applies only within a local jurisdiction ~~that has amended its general plan so that in which~~ the land use, housing, and open-space elements of the general plan are ~~substantially~~ consistent with the sustainable communities strategy, as modified by a supplement, if any, most recently adopted by the transportation planning agency pursuant to Section 65080 of the Government Code for the region in which the local government is located.

(b) For purposes of this section, the land use, housing, and open-space elements of the general plan are ~~substantially~~ consistent with the sustainable communities strategy, as modified by a supplement, if any, if the land use and housing elements include residential densities and building intensities designate ~~housing, retail, commercial, office, and industrial uses at levels of density and intensity~~ that are ~~substantially~~ consistent with the residential densities and building intensities ~~uses, density, and intensity~~ uses density, and intensity identified in the sustainable communities strategy, as modified by a supplement, if any, ~~for these locations~~ and if the open space element designates uses for significant farmlands or significant resource areas that will not have a significant impact which cannot be mitigated to a level of insignificance on are ~~consistent with the protection of all of~~ the resources of those lands

or areas.

(c) ~~Notwithstanding subdivision (a),~~ The provisions of Sections 21155.1, 21155.2, and 21155.3 may be utilized for projects within a local jurisdiction if the project is shown only in the supplement to the sustainable communities strategy. Such a project need not be located within a local jurisdiction in which the land use, housing, and open-space elements comply with subdivision (a).

(d) Notwithstanding subdivision (a) or (c), the provisions of Sections 21155.1, 21155.2, and 21155.3 may not be utilized for projects identified for development on lands referenced in clause (v) of subparagraph (F) of paragraph (2) of subdivision (b) of Section 65080.

21155.1. If the legislative body finds, after conducting a public hearing, that a project meets all of the requirements of subdivisions (a) and (b) and one of the requirements of subdivision (c), the project is declared to be a sustainable communities project and shall not be subject to any other provisions of this division.

(a) The project complies with all of the following environmental criteria:

(1) The project and other projects approved prior to the approval of the project but not yet built can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(2) (A) The site of the project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(B) For the purposes of this paragraph, "wetlands" has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) For the purposes of this paragraph:

(i) "Riparian areas" means those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) "Wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(iii) Habitat of "significant value" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game

Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(3) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(4) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(5) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(6) The project site is not subject to any of the following:

(A) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(B) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(C) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(D) Seismic risk as a result of being within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(E) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(7) The project site is not located on developed open space.

(A) For the purposes of this paragraph, "developed open space" means land that meets all of the following criteria:

(i) Is publicly owned, or financed in whole or in part by public funds.

(ii) Is generally open to, and available for use by, the public.

(iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(B) For the purposes of this paragraph, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired with public funds dedicated to the acquisition of land for housing purposes.

(8) The buildings in the project will comply with all green building standards required by the local jurisdiction.

(b) The project meets all of the following land use criteria:

(1) The project is located on an infill site.

(2) The project is a residential project or a residential or mixed use project consisting of residential uses and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25 percent of the total floor area of the project.

(3) The site of the project is not more than eight acres in total area.

(4) The project does not contain more than 200 residential units.

(5) The project density is at least equal to the applicable density level provided in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code.

(6) The project does not result in any net loss in the number of affordable housing units within the project area.

(7) The project does not include any single level building that exceeds 75,000 square feet.

(8) The project is consistent with the general plan.

(9) Any applicable mitigation measures approved in the final environmental impact reports on the regional transportation plan or the local general plan amendment have been or will be incorporated into the project.

(10) The project is determined not to conflict with nearby operating industrial uses.

(c) The project meets at least one of the following four criteria:

(1) The project meets both of the following:

(A) At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(B) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.

(2) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to paragraph (1).

(3) The project is located within one-quarter mile of a major transit stop.

(4) The project provides public open space equal to or greater than five acres per 1,000 residents of the project.

21155.2. (a) A project that meets the following requirements shall be eligible for either the provisions of subdivision (b) or (c):

(1) Environmental impact reports have been certified on the regional transportation plan containing the sustainable communities strategy and on the applicable general plan provisions.

(2) Any ~~applicable~~ mitigation measures or performance standards or criteria set forth in the prior environmental impact reports that are applicable to the project, and that are adopted in findings, have been or will be incorporated into the

project.

(3) The project density is at least 10 residential units per net acre.

(4) At least 75 percent of the total building square footage of the project consists of residential buildings.

(b) A project that satisfies the requirements of subdivision (a) may be reviewed through a sustainable communities environmental assessment as follows:

(1) An initial study shall be prepared to identify all significant or potentially significant project-specific impacts of the project. The initial study does not need to evaluate any significant cumulative or growth-inducing effects on the environment that were identified and discussed in the environmental impact reports certified for the regional transportation plan and the general plan.

(2) The sustainable communities environmental assessment shall contain measures that substantially lessen to a level of insignificance or avoid all project-specific impacts of the project.

(3) A draft of the sustainable communities environmental assessment shall be circulated for public comment for a period of not less than 30 days. Notice shall be provided in the same manner as required for an environmental impact report pursuant to Section 21092.

(4) Prior to acting on the sustainable communities environmental assessment, the lead agency shall consider all comments received.

(5) A sustainable communities environmental assessment may be approved by the lead agency after conducting a public hearing, reviewing the comments received, and finding that:

(A) All potentially significant or significant project-specific impacts have been identified and analyzed.

(B) With respect to each significant project-specific impact on the environment, either of the following apply:

(i) Changes or alterations made by, or agreed to by the applicant before the environmental assessment is released for public review have been required in or incorporated into the project that avoid or mitigate substantially lessen the significant effects to a level of insignificance.

(ii) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(6) The legislative body of the lead agency shall conduct the public hearing or a planning commission may conduct the public hearing if local ordinances allow a direct appeal of approval of a document prepared pursuant to this division to the legislative body subject to a fee that complies with section 65104 ~~not to exceed five hundred dollars (\$500)~~

(7) The lead agency's approval of a sustainable communities environmental assessment shall be reviewed under the substantial evidence standard. It is the intent of the Legislature that the standard applied to lead agency determinations under subdivisions (c) and (d) of Section 21080 of this division shall not apply to this subdivision.

(c) A project that satisfies the requirements of subdivision (a) may be reviewed by an environmental impact report that complies with all of the following:

(1) An initial study shall be prepared to identify all the project-specific impacts of the project that may have a significant

Comment [h9]: Tom Disgrace
However, this represents a cost shifting
mandate because the process cost is
\$500.

effect on the environment based upon substantial evidence in light of the whole record. The initial study does not need to evaluate any significant cumulative or growth-inducing effects on the environment that were identified and discussed in the environmental impact reports certified for the regional transportation plan and the general plan.

(2) An environmental impact report prepared pursuant to this subdivision need only address the significant or potentially significant impacts on the environment identified pursuant to paragraph (1). It is not required to analyze off-site alternatives to the project. It shall otherwise comply with the requirements of this division.

21155.3. (a) The legislative body of a local jurisdiction may adopt traffic mitigation measures that would apply to future projects described in subdivision (b). These measures shall be adopted or amended after a public hearing and may include requirements for the installation of traffic control improvements, street or road improvements, and contributions to road improvement or transit funds, transit passes for future residents, or other measures that will avoid or substantially lessen the traffic impacts of those future projects.

(b) The traffic mitigation measures adopted pursuant to this section shall apply to projects where the residential density is at least 10 units per net acre and where at least 75 percent of the total building square footage of the project consists of residential buildings.

(c) (1) A project described in subdivision (b) that is seeking a discretionary approval is not required to comply with any additional mitigation measures required by paragraph (1) or (2) of subdivision (a) of Section 21081, for the traffic impacts of that project on intersections, streets, highways, freeways, or mass transit, if the local jurisdiction issuing that discretionary approval has adopted traffic mitigation measures in accordance with this section.

(2) Paragraph (1) does not restrict the authority of a local jurisdiction to adopt feasible mitigation measures with respect to the impacts of a project on public health or on pedestrian or bicycle safety.

(d) The legislative body shall review its traffic mitigation measures and update them as needed at least every five years.

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.